IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

CRL.A.No. 1212 of 2002()

CC.1171/1998 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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APPELLANT: COMPLAINANT

T.M.ASHRAF, THAIKOOTTATHIL,
VAZHAKKALA, BMC P.O., KAKKANAD.

BY ADV. SRI.K.A.JALEEL
SRI.T.T.MUHAMOOD

RESPONDENTS: ACCUSED & STATE

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1. DINESHKUMAR C.P.,
S/O. PRABHAKARAN NAIR, ELANKALAYATH,
KUSUMAGIRI P.O., KAKKANAD.

2. THE STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.PRAMOD J.DEV
SRI.V.P.JOLY
BY PUBLIC PROSECUTOR SRI.MUHAMMED PUZHAKKARA.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 1212 of 2002

Dated this the 21st March, 2007.

J U D G M E N T

The complainant is before this Court challenging the acquittal of the accused, first respondent, in C.C.No.1171/1998, on the file of the Judicial First Class Magistrate Court-II, Aluva. The contention is centering on the dishonour of Ext.P1 cheque for an amount of Rs.1,80,000/= issued by the first respondent, dishonour of the same, and as well as the consequential non-payment of the cheque amount, when demanded by the complainant. The complainant was examined as PW.1. He also marked 8 documents. Though the first respondent did not enter the box, he examined PW.1 to prove that an amount of Rs.27,000/= was borrowed from one Kunju Mohammed on 10.4.1997, and at that time, he issued Ext.P1 cheque to the said Kunju Mohammed. Though the entire amount of Rs.27,000/= had been paid back, there was difference of opinion on the rate of interest to be paid to the said Kunju Mohammed. Because of this dispute, Kunju Mohammed did not return the cheque, and he in turn handed over the said cheque to the complainant, who had misused the same against the first respondent, and a false complaint has accordingly been filed.

2. The complainant has, however, maintained that he borrowed an amount of Rs.1,80,000/= from one Dr.Abdul Azeez, and it was the said amount that was paid to the first respondent, accused. The learned Magistrate accepted the version of the accused, first respondent, and rejected the contentions of the complainant. Therefore, the accused was acquitted. Hence, this appeal on obtaining leave of this Court.

3. During the hearing, the learned counsel appearing for the accused has produced an order of this Court, dated 21.10.1999, in Crl.M.P.No.3276/1999. The said order was passed under Section 438 Cr.P.C. preferred by the appellant herein. The facts contained in the said order reveal that the appellant had borrowed an amount of Rs.5,92,000/=, and issued a cheque which was dishonoured. Therefore, Dr. Abdul Azeez preferred a complaint. It was in order to avert an arrest that the appellant preferred the abovesaid petition under Section 438 Cr.P.C.

4. I am not accepting the statements of the appellant that the amount of Rs.1,80,000/= stated in Ext.P1 cheque had been borrowed, for the purpose of lending to the first respondent, accused.

The evidence available also is insufficient to come to a conclusion as to whether Rs.5,92,000/= borrowed from Dr.Abdul Azeez includes Rs.1,80,000/=, as stated by PW.1, the complainant. Further evidence is required on this aspect.

5. The first respondent, accused, also did not enter the box. The lower court accepted DW.1, the independent witness, who deposed about the transaction between the first respondent, and one Kunju Mohammed. Counsel for the first respondent, however, submitted that Kunju Mohammed may not speak the truth, as he is colluding with the appellant, and that was the reason, why the said Kunju Mohammed was not examined. The evidence available on record are insufficient to come to a definite conclusion about the findings arrived at, because of the nature of evidence available in this case. When DW.1 deposed that Ext.P1 was a blank cheque issued by the first respondent to the said Kunju Mohammed, further evidence on this matter may have to be adduced to establish the case, as presumption has shifted on the complainant. In such circumstances, I am of the view that an opportunity be given to the parties to adduce further evidence.

6. Therefore, I set aside the impugned judgment, dated 3.8.2002, and restore C.C.No.1171/98, to the file of the Judicial First Class Magistrate Court-II, Aluva.

7. The parties shall appear before the court below on 25.4.2007.

8. The learned Magistrate shall dispose of the matter, at the earliest, in any case, within four months from the date of appearance of the parties, as per the law, untrammeled by the observations and discussions contained in this judgment.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.

J.M. JAMES, J.

Criminal Appeal No. 1212 of 2002

J U D G M E N T

Dated: 21st March, 2007.